

REMARKS/ARGUMENTS

Reconsideration and favorable action are respectfully requested. Currently, claims 48 and 50-65 stand in the present application.

Rejection under 35 U.S.C. § 102:

Claims 48-53, 57 and 59-62 were rejected under 35 U.S.C. § 102(e) as being allegedly being anticipated by Rollins. Applicant respectfully traverses this rejection.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986). Rollins fails to disclose every claim element of the claimed invention. For example, Rollins fails to disclose “applying a billing process to connections established at the higher bandwidths but not at the first bandwidth, to generate a billing output, and wherein the billing process records connections established on the network, and also records which connections using one of the higher bandwidths make use of the specified application so that the billing process charges connections using one of the higher bandwidths which make use of the specified application at a first charge rate and charges connections using one of the higher bandwidths which do not make use of the specified application at a second charge rate that is different from the first charge rate,” as required by independent claim 48 and its dependents. Rollins also fails to disclose “wherein connections using one of higher bandwidths are charged by the billing engine at different rates according to whether connections using one of the higher bandwidths make use of that application so that which of the different rates charged by the billing engine depends on whether or not that connection using one of the higher bandwidths makes use of that application, wherein connections are made available at a first low-bandwidth and at least one of the higher

bandwidths, and the application of different rates dependant on the application used is only applied to connections established at the higher bandwidths,” as required by independent claim 57 and its dependents.

In claims 48 and 57, the rate charged for a high-bandwidth connection depends on whether a “specified” application is used. In contrast, Rollins’ charge depends only upon the bandwidth required by the application, and not upon its identity. In particular, Rollins charges all connections using a given bandwidth at the same rate. For example, column 3, lines 8-11 (part of the specifically cited portions of Rollins) states “For the time in which the bandwidth allocation was increased, the NSP 12 and/or a central office 18 (of the telephony subscriber system 5) may bill the user’s account a surcharge based on the duration of this time.” Rollins therefore discloses that the NSP 12 and/or central office 18 charges the user the rate for the higher bandwidth, but it does this regardless of the use to which the bandwidth is being put. Rollins clearly discloses that all the users will be charged the same rate for all applications having the same bandwidth requirements.

Dependent claim 58 further distinguishes between a connection using a higher bandwidth from another connection also using a higher bandwidth. Namely, dependent claim 58 requires “wherein connections using one of the higher bandwidths making use of the application are charged at a lower rate than other connections using one of the higher bandwidths but not making use of the application.” By way of example, the specified application may be an application which authorizes downloads (on subscription or the like) so that a charge for a high-bandwidth connection is lower when using such an application. In this example, a default charge at a higher rate is imposed on a high-bandwidth connection which does not use the application.

Rollins charges differential rates for different bandwidths, but takes no account of the application being used. Rollins' billing is dependant only on the required bandwidth, and charges the same for that bandwidth whatever the application that required it. In contrast, claim 58 charges a lower rate for high-bandwidth connections which make use of an application as opposed to those high-bandwidth connections which do not make use of the application.

Accordingly, Applicant respectfully requests that the above-noted rejection under 35 U.S.C. §102 be withdrawn.

Rejection under 35 U.S.C. §103:

Claims 54-56 and 63-65 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rollins in view of Kitze. Claim 58 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rollins in view of Bowman-Amuah (U.S. '239). Applicant traverses these rejections.

Each of these claims depends at least indirectly from base independent claim 48 or 57. Neither Kitze nor Bowman-Amuah resolves the deficiencies of Rollins with respect to base independent claim 48 or 57. Accordingly, Applicant respectfully requests that the above-noted rejections under 35 U.S.C. § 103 be withdrawn.

CLARK et al
Appl. No. 10/501,779
June 30, 2010

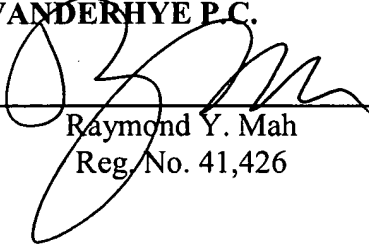
Conclusion:

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


Raymond Y. Mah
Reg. No. 41,426

RYM:dmw'
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100